BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

TAMARA L. WILSON)
Claimant)
VS.)
) Docket No. 1,000,093
ASSISTED HEALTH CARE)
Respondent)
AND)
COMMERCE AND INDUSTRY INSURANCE CO.)
Insurance Carrier)

ORDER

Respondent requested Appeals Board review of Administrative Law Judge Robert H. Foerschler's February 22, 2002, Preliminary Decision.

ISSUES

The Administrative Law Judge (ALJ) granted claimant's request for a change of authorized physician to a specialist qualified and willing to treat upper extremity disorders, according to the procedure outlined in K.S.A. 44-510h(b)(1). Additionally, the ALJ granted claimant's request for payment of temporary total disability compensation from November 26, 2001.

Respondent appeals and raises the single issue of whether the ALJ exceeded his authority in granting claimant temporary total disability benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the arguments contained in the parties' briefs, the Appeals Board (Board) makes the following findings and conclusions:

The preliminary hearing statute gives the ALJ authority to grant or deny a request for either medical treatment or temporary total disability compensation pending a full hearing on the claim. The issue as to whether claimant is temporarily and totally disabled is not one of the disputed issues listed in the preliminary hearing statute that grants the

Board jurisdiction to review the preliminary hearing finding.¹ Thus, since the ALJ did not exceed his jurisdiction² and the disputed issue raised is not a jurisdictional issue, the Board finds, as it has on numerous occasions, it does not have jurisdiction, at this juncture of the proceedings, to review the ALJ's preliminary hearing findings in regard to temporary total disability compensation.

WHEREFORE, it is the finding, decision, and order of the Board that the respondent's appeal of ALJ Robert H. Foerschler's February 22, 2002, Preliminary Decision should be, and is hereby, dismissed.

IT IS SO ORDERED.
Dated this day of April 2002.
BOARD MEMBER

c: Robert W. Harris Attorney for Claimant Eric T. Lanham, Attorney for Respondent Robert H. Foerschler, Administrative Law Judge Philip S. Harness, Workers Compensation Director

¹ See K.S.A. 44-534a(a)(2).

² See K.S.A. 2001 Supp. 44-551(b)(2)(A).